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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

4  
**Feb 03, 2023**

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SEAN F. McAVOY, CLERK

6  
UNITED STATES DISTRICT COURT

7  
EASTERN DISTRICT OF WASHINGTON

8  
BILLY EDWARD TOYCEN,

No. 1:22-cv-3157-MKD

9  
Plaintiff,

10  
ORDER DENYING LEAVE TO  
11  
PROCEED *IN FORMA PAUPERIS*  
AND DISMISSING ACTION

12  
v.  
UNITED STATES DISTRICT COURT  
and YAKIMA COUNTY DISTRICT  
COURT,

Defendants.

13  
By Order filed December 5, 2022, the Court directed Plaintiff Billy Edward  
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Toycen who had filed this *pro se* civil rights complaint while incarcerated at the  
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Yakima County Jail, ECF No. 1, to show cause why his application to proceed *in*  
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*forma pauperis* should be granted. ECF No. 6 at 4. In the alternative, Plaintiff was  
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instructed that he may pay the \$402.00 fee (\$350.00 filing fee, plus \$52.00  
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administrative fee) for this action. *Id.* Plaintiff was cautioned that failure to do  
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either would be construed as his consent to dismissal of this action without  
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prejudice for failure to comply with the filing fee requirements of 28 U.S.C. §

ORDER DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* AND  
DISMISSING ACTION - 1

1 1914. *Id.*

2 A copy of that Order was mailed to the residential address Plaintiff provided  
3 in Yakima, Washington, on December 5, 2022. ECF No. 6. Plaintiff did not  
4 comply with the Court's directives and has filed nothing further in this action. He  
5 did not refute the Court's finding that he had filed three or more actions that were  
6 dismissed as frivolous, malicious, or for failure to state a claim upon which relief  
7 may be granted. *See id.* at 3.

8 The Court finds that Plaintiff has failed to demonstrate that he is eligible to  
9 proceed *in forma pauperis* under 28 U.S.C. § 1915(g), or that he was under  
10 imminent danger of serious physical injury when he filed his Complaint. *See*  
11 *Andrews v. Cervantes*, 493 F.3d 1047, 1055-56 (9th Cir. 2007) (discussing  
12 imminent danger exception to three-strikes rule). Therefore, Plaintiff has lost the  
13 privilege of filing this lawsuit *in forma pauperis*.

14 Although granted the opportunity to do so, Plaintiff did not pay the \$402.00  
15 filing fee to commence this action. As a result, the Court dismisses this case  
16 without prejudice for failure to comply with the filing fee requirements of 28  
17 U.S.C. § 1914.

18 Therefore, **IT IS ORDERED:**

19 1. Plaintiff's application to proceed *in forma pauperis*, **ECF No. 2**, is  
20 **DENIED**.

ORDER DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* AND  
DISMISSING ACTION - 2

2. This action is **DISMISSED WITHOUT PREJUDICE** for non-payment of the filing fee as required by 28 U.S.C. § 1914.

3. The Court certifies that any appeal of this dismissal would not be taken in good faith.

**IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order, enter judgment, provide copies to Plaintiff at his last known address, and **CLOSE** the file.

**DATED** February 3, 2023.

s/Mary K. Dimke  
MARY K. DIMKE  
UNITED STATES DISTRICT JUDGE